

### **REMARKS**

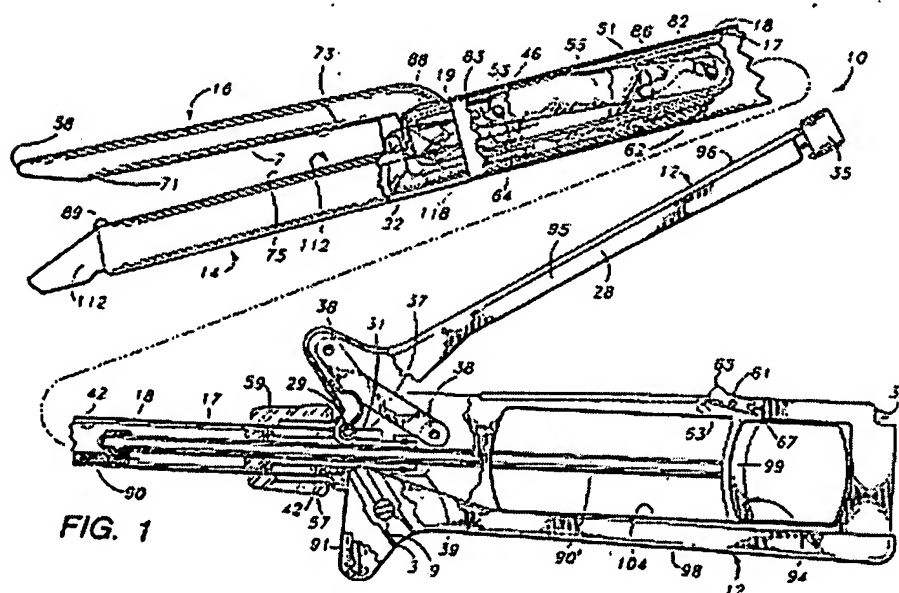
Claims 17-27 and 37-40 are currently pending in this application. Of these claims, Claims 28-36, which were non-elected by Applicant in Applicant's response filed June 29, 2006, have been canceled without prejudice and will be the subject of a subsequently filed divisional application. In addition, Claims 37-40, which were added to this application in Applicant's amendment filed November 14, 2006, were also withdrawn from consideration by the Examiner as being directed to a non-elected invention. By this amendment, Claim 17 has been amended, as discussed below, to overcome a rejection under 35 U.S.C. § 112, second paragraph. In view of the amendments above and the remarks to follow, reconsideration of this application is respectfully requested.

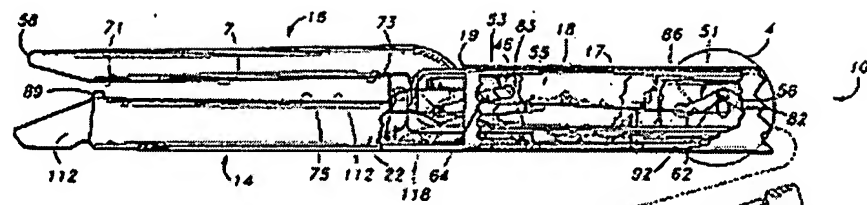
In the Office Action, Claims 17-27 and 37 were rejected under 35 U.S.C. § 112, second paragraph because, the examiner states, "the functional recitation of 'in response to an actuating stroke' is narrative in form without positively reciting any structure." Applicants have amended Claim 17 to delete the recitation "in response to an actuating stroke" in lines 3 and 4 and insert the recitation "through an actuating stroke" in line 7. Line 7 now recites "the approximation member being movable through an actuating stroke to move...". This amendment, which was included to obviate the rejection under 35 U.S.C. § 112, second paragraph, is consistent with the language recited in lines 9-14 of Claim 17 and would not necessitate further search or consideration by the Examiner. Accordingly, Applicants believe that the rejection of Claims 17-27 and 37 should be withdrawn.

In the Office Action, Claims 17-27 and 37 were rejected under 35 U.S.C. § 102(b) over U.S. Patent 5,816,471 to Plyley et al. ("Plyley"). Plyley discloses surgical stapler 10 shown in

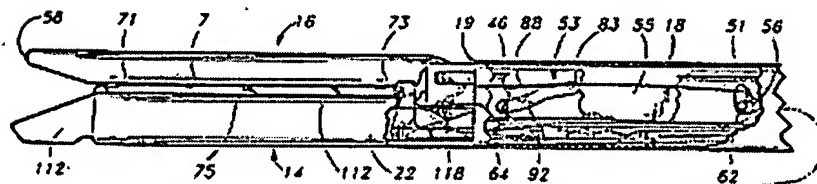
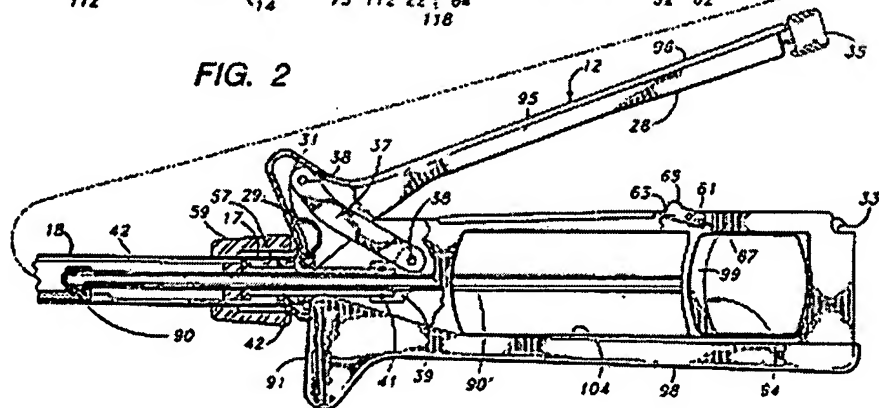
FIGS. 1-3 below which includes a handle portion 12, a cartridge retention portion 14 which supports a cartridge and an anvil retention portion 16 which supports an anvil. Column 13, lines 53-64 of the specification of Plyley describes the movement of the anvil from the open position to the closed position as follows:

“The movement of anvil from the open position (FIG. 1) toward the closed position (FIG. 3) is referred to as “tip to tail” closure as initially the leading portion 71 of the anvil moves toward the closed position more rapidly than the trailing portion 73, and then the relative speeds of closure of the leading and trailing portions 71 and 73 are reversed. Preferably, the leading portion 71 reaches a fully closed position prior to the trailing portion 73. This motion is believed to provide desirable clinical results as the initial closure of the distal portion resists extrusion of tissue from between the cartridge retention and anvil portions of the stapler.”

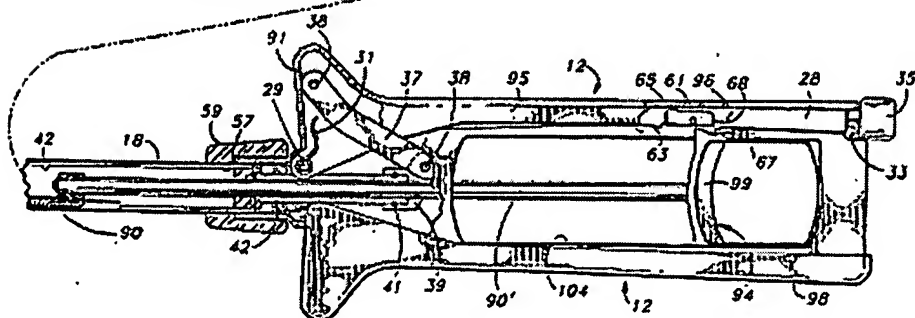




**FIG. 2**



**FIG. 3**



Claim 17 recites a tool assembly including, inter alia, a pair of jaws, at least one cam surface, first and second cam followers and an approximation member. Claim 17 also recites that the “approximation member is movable to move the at least one cam surface in relation to

the first and second cam followers to effect movement of the first jaw to approximate a distal end of the first jaw with the second jaw in a first portion of the actuating stroke, to move the distal end of the first jaw away from the second jaw in a second portion of the actuating stroke, and to bring together the first jaw and the second jaw in substantially parallel closure in the third portion of the actuating stroke.” As described above, Plyley fails to disclose a tool assembly which effects movement of a pair of jaws as recited in Claim 17. More specifically, Plyley does not, in a second portion of the actuating stroke, “move the distal end of the first jaw away from the second jaw” as recited in Claim 17. As clearly described in the paragraph reproduced above from the Plyley specification, movement of the leading portion of Plyley’s anvil toward the closed position is initially more rapid than the trailing portion, than the relative speeds of closure are reversed. The leading portion reaches the closed position first. In no portion of the movement of Plyley’s anvil to the closed position does the leading portion of Plyley’s anvil move away from Plyley’s cartridge. Thus, Plyley does not anticipate Claim 17.

Each of Claims 18-27 and 37 depend either directly or indirectly from Claim 17. For at the reason discussed above with respect to Claim 17, inter alia, Claims 18-27 and 37 are also in condition for allowance.

In view of the foregoing remarks, it is respectfully submitted that all claims pending in the application, namely claims 17-40, are in condition for allowance. Accordingly, early and favorable reconsideration of this application is respectfully requested. Should the Examiner feel

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that a telephone or personal interview may facilitate resolution of any remaining matters, he is respectfully requested to contact Applicant's attorney at the number indicated below.

Respectfully submitted,



Christopher G. Trainor

Reg. No. 39,517

Attorney for Applicant(s)

**CARTER, DELUCA, FARRELL & SCHMIDT, LLP**  
445 Broad Hollow Road - Suite 225  
Melville, New York 11747  
(631) 501-5700

**Correspondence Address:**  
Chief Patent Counsel  
United States Surgical, a Division of  
Tyco Healthcare Group LP  
195 McDermott Road  
North Haven, CT 06473  
(203) 492-5000